

APPEAL NO. 041435
FILED JULY 15, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on April 5, 2004. The hearing officer determined that the Independent Review Organization's (IRO) decision against spinal surgery is supported by a preponderance of the evidence and that the request for spinal surgery is not approved. In her appeal, the appellant (claimant) essentially argues that the hearing officer erred in giving presumptive weight to the IRO's decision against spinal surgery and asks that we determine that the respondent (carrier) is liable for the cost of the proposed spinal surgery. In its response to the claimant's appeal, the carrier urges affirmance.

DECISION

Affirmed.

In her appeal, the claimant argues that the hearing officer erred in giving presumptive weight to the IRO's determination against spinal surgery. Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 133.308 (Rule 133.308) provides for medical dispute resolution by IROs including prospective medical disputes of the medical necessity of proposed spinal surgery for which the initial dispute resolution request was filed on or after January 1, 2003. Rule 133.308(p)(5) provides that an IRO decision is deemed to be a decision and order of the Texas Workers' Compensation Commission; and Rule 133.308(w) provides that "[i]n all appeals from reviews of prospective or retrospective necessity disputes, the IRO decision has presumptive weight." We have previously addressed the "presumptive weight" provision of Rule 133.308(w) and determined that it is an evidentiary rule which creates a rebuttable presumption, as distinguished from a conclusive presumption, that the IRO decision is the correct decision which should be adopted by the hearing officer and the Appeals Panel unless rebutted by contrary evidence. See Texas Workers' Compensation Commission Appeal No. 021958-s, decided September 16, 2002. In the instant case, the hearing officer concluded that the decision of the IRO was supported by a preponderance of the evidence and thus was entitled to presumptive weight. Based upon our review of the record, we find no error in the hearing officer's having done so.

The hearing officer's decision and order is affirmed.

The true corporate name of the insurance carrier is **THE NORTH RIVER INSURANCE COMPANY OF NEW JERSEY** and the name and address of its registered agent for service of process is

**PAUL DAVID EDGE
6404 INTERNATIONAL PARKWAY, SUITE 1000
PLANO, TEXAS 75093.**

Elaine M. Chaney
Appeals Judge

CONCUR:

Robert W. Potts
Appeals Judge

Margaret L. Turner
Appeals Judge